

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LORENZO FREDERICK,

Defendant-Appellant.

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UNPUBLISHED

February 28, 2006

No. 258398

Wayne Circuit Court

LC No. 04-007066-01

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two years' probation for the felonious assault conviction and two years' imprisonment for the felony-firearm conviction. He now appeals and we affirm.

Defendant asserts that the evidence presented at trial was insufficient to sustain his felonious assault and felony-firearm convictions. We disagree. When reviewing a claim of insufficiency of the evidence, this Court does so de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). The Court reviews the evidence "in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). In doing so, "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime." *Id.*

The elements of felonious assault require the prosecution to show that defendant committed: "(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The elements of a felony-firearm conviction require that the defendant possess "a firearm during the commission of, or the attempt to commit, a felony." *Avant, supra*, p 505. Defendant maintains that he never shot at the complaining witness, Aisha Young, on the night in question, but instead, lit a firecracker that sounded like a gunshot. Defendant also maintains that the prosecution presented inconsistent testimony, and, therefore, the evidence presented was insufficient to sustain his convictions. We disagree.

Defendant maintains that he did not possess a gun on the night in question, and, therefore, he did not shoot at Aisha. However, the evidence presented is sufficient to infer otherwise.

Aisha testified that defendant pointed a gun at her side and fired at her while she was at defendant's home. Joyell Burke, an eyewitness to the incident, testified that while in front of defendant's home, near Aisha's car, she heard a "pop," which she thought initially was a firecracker until she looked up and saw defendant with a small, black handgun in his hands. Aisha's brother, Damon, another eyewitness within close proximity to the incident, heard a gunshot and saw defendant with a small handgun in his hand. Although Damon's color description of the handgun is inconsistent with Aisha's and Joyell's color description, three people testified that defendant possessed a small handgun on the night in question. Moreover, two of the three witnesses testified that the handgun was small and black. When the policemen checked the front and backyard of the house they did not find any evidence of firecrackers. However, the policemen recovered a spent casing on the front porch near where defendant was alleged to have fired the shot. Defendant argues that no weapon was found at the scene and the shell casing found had to be at least one year old. However, these arguments fail because the lack of a weapon found on defendant's person or at the scene of the crime does not necessarily mean that he did not possess a gun on the night in question. It was established that the police did not arrive at the scene until about an hour after the alleged incident, and thus, given the time frame, it can be reasonably concluded that defendant had ample time to discard the weapon. In addition, the shell casing found was in close proximity to where Aisha testified that defendant was standing when he fired at her. Thus, the prosecution presented sufficient evidence from which a reasonable trier of fact could find that defendant committed an assault with a dangerous weapon, thus satisfying the first two elements of the offense of felonious assault.

The prosecution also presented sufficient evidence for a rational trier of fact to determine that defendant shot at Aisha with the intent to injure or place her in reasonable apprehension of an immediate battery. Several witnesses testified that defendant did not want Aisha at his house on the night in question. Aisha maintains that when defendant fired the shot at her, he used profane language indicating that he did not want her to come back to his house. Defendant did not aim the gun directly at Aisha but instead pointed the gun at her side and fired one shot. Defendant's brother, Paul, heard Aisha screaming, "he trying to kill me." Thus, based on the words and actions of defendant, the prosecution presented sufficient evidence for a reasonable trier of fact to conclude that defendant intended to place Aisha in reasonable apprehension of an immediate battery.

Defendant further argues that there was reasonable doubt in the mind of the court regarding his guilt until the moment he testified on his behalf. Defendant argues that the prosecution did not prove his guilt beyond a reasonable doubt but, instead, the trial court found him guilty based on his own testimony. This Court has held that the "trier of fact may make reasonable inferences from direct or circumstantial evidence in the record." *People v Perkins*, 262 Mich App 267, 268-269; 686 NW2d 237 (2004). Moreover, "deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses." *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003). Although the trial court determined that defendant's testimony lacked credibility, the court also found that the prosecution presented credible witnesses who actually witnessed the events that transpired. In assessing the evidence presented, the court found that the prosecution presented three credible witnesses who testified that they saw defendant with a weapon on the night in question. The court also found defendant's testimony inconsistent, argumentative and unbelievable. Thus, the court, as the finder of fact, ultimately determined that defendant's testimony lent credence to the testimony of

Aisha and Damon, and therefore, the court found that defendant was guilty of the crimes charged. Even though defendant helped the prosecution prove its case, by defendant's inconsistent and unreliable rendition of the events, the court found that the prosecution did present enough evidence to establish defendant's guilt beyond a reasonable doubt.

The prosecution has sufficiently established the necessary elements for a felonious assault conviction. Therefore, the elements necessary for defendant's felony-firearm conviction have been met as well. The prosecution established that defendant possessed a firearm during the commission of a felony.

Affirmed.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald